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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/852,348

Filing Date: May 09, 2001

Appellant(s): RICHTER ET AL.

Alfred K. Dassler
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 29, 2005 appealing from the Office action mailed June 1, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,220,494	RAFFONI	04-2001
6,142,353	BOSS et al.	11-2000
5,816,467	DUNN	10-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 6, 12, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boss et al. (USPN 6,142,353) in view of Raffoni (USPN 6,220,494).

In reference to claims 6, 12, 20-23, Boss et al. discloses a gathering stapler comprising: a plurality of cooperating subassemblies including an operatively revolving endless chain (6) having a conveying strand running in a conveying direction (63) at a certain speed and conveying gathered folded sheets (11); a stapling carriage (15) attached to the conveying strand (via 29) and operatively oscillating in parallel with the conveying strand for running in synchronicity with the conveying strand in the conveying direction with certain time segments (column 3, lines 15-21); stapling heads (16) mounted to the stapling carriage (15) and adapted for ejecting staples; a stapling displacement (column 4, lines 31-37) configuration adapted for activating the stapling heads for ejecting staples; a delivery (10); an ejector (column 3, lines 9-14); and a plurality of subassembly drives (12, 14, 39). Boss et al. does not disclose a motor for separately controlling at least some of the subassemblies.

Raffoni teaches a fastening device comprising a plurality of subassemblies including: a delivery conveyor (2); a guide rail (13); a stapling carriage (25, 26); stapling head and displacement configuration (31, 38) mounted to the stapling carriage (25, 26); an ejector (conveyor downstream of 2); the subassemblies running in continuous operation (cycle); and a plurality of subassembly drives (17, 28, 37, 35, 39) managed by a central control device (control box adjacent delivery conveyor, wherein the drives for the subassemblies are motors such that the stapling heads and displacement configurations (31, 38) are controlled by a motor (35, 39) and the stapling carriages (25, 26) are controlled by a motor (28, 37). It would have been obvious to one having ordinary skill in the art to modify the single drive system of Boss et al. to include the multiple drive system of Raffoni for the purpose of offering the capability of individual adjustment (Raffoni-column 7, lines 60-64).

Although Raffoni does not specifically disclose the use of a motor to actuate the conveyor (111), it would have been obvious to one having ordinary skill in the art at the time the invention was made to actuate the conveyor using a motor since Examiner takes Official Notice that the use of motors to power an endless conveyor was well known for the purpose of automation.

Claims 8, 10, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boss et al. (USPN 6,142,353) in view of Raffoni (USPN 6,220,494) as applied to claim 20 above, and further in view of Dunn (5,816,467).

Regarding claims 8, 10 and 11, Boss et al. in view of Raffoni discloses a stapling apparatus having subassemblies controlled by individual motors, the control means for the motors being a central control device. However, the control device is not specifically disclosed

as being a programmable computer. Dunn teaches a stapling apparatus comprising a delivery conveyor (111) having an independent drive system, which is synchronized with the drive system of a stapling carriage (116) and a stapling displacement configuration (117), the drive systems being centrally controlled by a programmable computer (121; column 3 lines 16-39). It would have been obvious to one having ordinary skills in the art at the time of the invention to replace the control device of Boss et al. in view of Raffoni with the programmable computer of Dunn for the purpose of eliminating manual operation of the stapling device in response to required adjustments to the subassemblies of the stapling apparatus (Dunn-column 2 lines 10-23).

In reference to claim 14, Boss et al. in view of Raffoni and Dunn discloses a gathering stapler controlled by a computer, but does not disclose the external composition of the computer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a computer having a display device since Examiner takes Official Notice that programmable computers are known to include a display device and an operating panel.

Claims 21, 22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boss et al. (USPN 6,142,353) in view of Dunn (5,816,467).

With respect to claims 21, 22, 24 and 25, Boss et al. discloses a gathering stapler apparatus having a single drive system divided in to a first and second sub-drive assembly. Dunn teaches a stapling apparatus comprising an endless delivery conveyor (111) having a drive system separate from the drive system of a stapling carriage (116) and stapling displacement configuration (117), wherein the conveyor (111) is driven without interruption, while the stapling carriage (116) and stapling head (117) are capable of adjustment in paths parallel to the travel

path of the conveyor (111; column 3 lines 25-40). The adjustments of the stapling carriage (116) and stapling head (117) are made in response to a conveyor speed sensor (122). Although Dunn does not specifically disclose the use of motors to actuate the independent drive systems of the conveyor (111), stapling carriage (116) and stapling head (117), it would have been obvious to one having ordinary skill in the art at the time the invention was made to actuate the drive systems using a motor since Examiner takes Official Notice that the use of motors to power an endless conveyor and robotic structure (stapling carriage and stapling head) was well known for the purpose of automation.

(10) Response to Argument

Applicant's initial argument states that Boss fails to disclose or suggest the use of separate drives for individual components. Examiner agrees that Boss discloses an interconnected drive unit (3) for operating the various subassemblies of Boss. However, the primary drive unit (3) consists of a first (12) and second (14) drive unit to control at least two subassemblies individually. Column 5, lines 59-62 of Boss states that the separate drives (12, 14) allow for individual adjustment of respective subassemblies. Thus, Examiner has found that Boss only fails to disclose the use of a separate motor for the first (12) and second (14) drive units, while meeting all other limitations of independent claim 20 of Applicant's invention.

Applicant further argues that secondary reference Raffoni would not be considered by one of ordinary skill in the art as a relative teaching in the art of gathering staplers, as the fastening device of Raffoni operates at a slower speed than gathering staplers. Examiner disagrees as both the fastening device of Raffoni and the fastening device of Boss are both classified in the art of

Elongated-Member Driving Apparatus Having Means To Support Member and/or Work Relative To Driver. Granted the apparatus of Raffoni may operate at a significantly slower speed than the apparatus of Applicant's invention and that of Boss, the concept of separate drives for subassemblies wherein each drive has a motor is disclosed by Raffoni. There are no structural limitations claimed by Applicant's invention that correlates speed with the subassembly drives, other than the fact that the subassembly drives must be capable of synchronization with one other, which is disclosed by the subassembly drives of Raffoni.

The motivation for combining Boss et al. with Raffoni stems from column 5, lines 59-62 of Boss et al., which states that separate drives for subassemblies is desirable for the option of individual adjustment of the subassemblies. While Boss et al. discloses separate drives interconnected and driven from one primary source of operation, Raffoni teaches separate drives having separate motors or sources of operation.

Applicant's arguments drawn to Raffoni's lack of disclosure with respect to an oscillating ejector and oscillating stapling carriage is moot as Examiner has not relied on Raffoni for the disclosure of such structure. The primary reference of Boss et al. is found to meet the structural limitation of an oscillating ejector synchronized with an oscillating stapling carriage, whereas Raffoni is relied upon for its teaching of fastening device having separate subassembly drives with separate motors.

Applicant's final argument states Raffoni's is silent to any teaching of synchronization between disclosed subassemblies. Examiner disagrees with this argument as column 3, lines 40-45 of

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Raffoni suggest some form of synchronization between subassemblies, as the activation of one subassembly (31, 38) is dependant on the function of another (2).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Gloria R. Weeks

Conferees:

Louis Huynh 


Scott Smith